

curities, he would upon a proper application be decreed to replace the stock, and if the stock be replaced at a less sum than that at which it was sold, he would be compelled to invest the surplus in the same stock, to the same uses. *Hill on Trustees*, 381.

The question then, in this case, is, whether the court will decree a change of an investment made by a testator, who did not think proper, by his will, to give such power to his trustee. It is not necessary to decide whether there might not, from a change of circumstances, be such an urgent and imperious necessity, looking to the safety of the trust fund, as to induce the court to direct a change; but whether, when no alteration has taken place, and the fund, so far as the court can see, is quite as secure as when the testator died, the securities selected by him shall be sold, and the proceeds invested in a different way. In this state there is no court stock, as there is in England, where the three per cents. are always selected as the proper security for the investment of funds under the control of the court, and if the trustee, holding money in his hands, invest it in that way, he will always be protected, as the court will sanction when done, what, upon application, it would have ordered to be done. As then we have here no favorite stock for the investment of trust money, and no securities so little liable to fluctuation as the English three per cents., there is at all times, some little difficulty, when the parties do not agree, in making a proper selection, and there should be more reluctance here than in England in changing an investment made by the author of the trust.

The application in this case, derives little or no strength from the fact, that the *cestui que trusts* have united in it, for being one of them a married woman and the rest infants, their concurrence is of no value. The cases show that a loss occasioned by an improper investment, though it were made with the consent or even at the urgent request of a party, not *sui juris*, as an infant or married woman, will be visited upon the trustee at the suit of such party. *Hill on Trustees*, 382.

In this case, the stocks which it is proposed to sell, were purchased by the testator, and he gave them for the use of his